

K Great Brit George III

No 42

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FOR

C. 42.

Dividing and Inclosing several Common
Fields, Commons, Common Heaths,
and Waste Grounds, in the Parish of
Portesham, in the County of *Dorset*.



Whereas there are in the Parish of *Portesham*, in the County of *Dorset*, several common arable Fields, called the *East Field*, the *Middle Field*, and the *West Field*, and several Commons, common Heaths, and waste Grounds, called the *Black Down*, containing One thousand Two hundred Acres, or thereabouts:

Preamble.

And whereas *Essex Biscoe*, Esquire, is Impropiator of the great Tythes of the said Parish, and the Reverend *John Rhuddle*, Clerk, is Vicar of the Parish and Parish Church of *Portesham* aforesaid:

A

And

And whereas *Joseph Hardy* the younger, Esquire, *Thomas Gilbert*, *John Trenchard*, *William Wiseman Riccard*, and others, are the Owners and Proprietors of and Persons interested in the said several common arable Fields, Commons, common Heaths, and waste Grounds, and the Lands therein lie intermixed and dispersed, and in their present Situation yield but little Profit, and are incapable of much, if any, Improvement, and it would be advantageous to them if the same were divided and inclosed: But as such Division and Inclosure cannot be effectually made and established without the Authority of Parliament;

May it therefore please Your MAJESTY,

That it may be Enacted; And be it Enacted, by the KING's most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That *John Light Banger* of *Waterstone*, in the County of *Dorset*, *John Everett*, of *Longbredy* in the said County, *John Devenish* of *Charminster* in the said County, *Morgan Balsford* of *Winterborne Saint Martin* in the said County, and *John Pitman* of *Froome Whitefield* in the said County, Gentlemen, and their Successors, to be elected in Manne therein-after mentioned, shall be and they are hereby appointed Commissioners for setting out, dividing and allotting the said common Fields, Commons, common Heaths, and waste Grounds, in the said Parish, which now lie open, intermixed, and uninclosed, and for putting this Act in Execution.

Commission-
ers.

Survey to be
made if ne-
cessary.

And be it further Enacted, That the said Commissioners, or any Three of them, shall as soon as conveniently may be after the passing of this Act, make or cause to be made (if they think it necessary) a true and distinct Survey of all the said common Fields, Commons, common Heaths, and waste Grounds; and such Survey shall be reduced into Writing, and the Number of Acres, Roods, and Perches therein shall be therein specified; and the said Survey shall be laid before the said Commissioners, or any Three of them, at One of their Meetings to be held in pursuance of this Act, to be by them kept for the Purpose of this Act.

Commission-
ers to allot
Lands,

And be it further Enacted, That the said Commissioners, or any Three of them, shall and they are hereby authorized and required, as soon as conveniently may be after the said Survey (if any shall be made as aforesaid) shall have been laid before them; and if no Survey shall be thought necessary to be made, then as soon as conveniently may be after the passing of this Act, to divide, set out, allot, and appoint, the said common Fields, Commons, common Heaths, and waste Grounds, unto and amongst the said *Joseph Hardy*,

Hardy, Thomas Gilbert, John Trencbard, William Wiseman Riccard, and such other Person and Persons who at the Time of making such Allotments shall be intituled to any Lands, Right of Common, or other Interest, in the said common Fields, Commons, common Heaths, or waste Grounds, so intended to be divided and inclosed, in Proportion to their respective Right of Common, or other Interest therein, subject to the Rules, Orders, and Directions herein contained. To the Persons interested.

Provided always, That nothing herein contained shall empower the said Commissioners, or any of them, to give any undue Preference to any of the Parties interested in the said intended Division and Inclosure, in respect of their Shares and Allotments; but that the said Commissioners, in making such Allotments, shall have a due Regard to the Quality as well as Quantity of the Lands to be allotted to the several Parties interested, and also to the convenient Situation thereof, to and for whom the same shall be respectively allotted. Commissioners to give no undue Preference.

And be it further Enacted, That the said Commissioners, or any Three of them, in making the respective Allotments to the several Parties interested, shall observe the following Rule (that is to say) the respective Allotments to the several Parties interested, who have Lands and Right of Common in the said common Fields, Commons, common Heaths, or waste Grounds, shall be computed, reckoned, regulated, and adjusted, by and according to the Number of Acres of arable Land, and the Number of Pastures for Beasts and other Cattle, which each Party shall have in the said common Fields, Commons, common Heaths, and waste Grounds, at the Time of making such Allotments. Rule to be observed in the making of Allotments.

And be it further Enacted, That if any Dispute or Difference shall arise between the Parties interested in the said Division and Inclosure, or otherwise touching and concerning the respective Rights and Interests, which they or any of them now have, or claim to have, in the said common Fields, Commons, common Heaths, or waste Grounds, so intended to be divided and inclosed as aforesaid, or touching and concerning the respective Shares and Proportions which they or any of them ought to have, of and in the said intended Division and Inclosure, it shall and may be lawful to and for the said Commissioners, or any Three of them, and they are hereby empowered and required, by Examination of Witnesses upon Oath (which Oath the said Commissioners, or any Three of them, are hereby authorized and empowered to administer), and upon other proper and sufficient Inquiry, Evidence, and Satisfaction, to hear and finally to determine the same; and such Determination shall be binding and conclusive to all Parties whomsoever. Disputes among the Parties respecting their Lands and Allotments to be determined by the Commissioners.

And

Commis-
sioners to set
out Roads.

And be it further Enacted, That the said Commissioners, or any Three of them, shall and may set out and appoint such publick or private Roads or Ways through the said intended Inclosures as they shall think convenient, so as that all such publick Roads shall be Forty Feet broad between the Ditches or Fences; and such publick Roads shall at all Times for ever thereafter be repaired, and kept in Repair, in such Manner as other publick Highways are by Law directed to be repaired; and that after the making the Roads and Ways so to be set out and appointed as aforesaid, it shall not be lawful for any Person or Persons to use any other Roads or Ways, either publick or private, over the said intended Inclosures on Foot, or with Horses, Cattle, or Carriages; and that all the former Roads and Ways, which shall not be set out and appointed as the Roads and Ways through the said intended Inclosures, shall be deemed Part of the Lands to be inclosed, and shall be divided and allotted accordingly as Part of such Lands.

Commission-
ers to make
an Award of
the Allot-
ments, &c.

And be it further Enacted, That within the Space of Six Calendar Months after the Division and Allotments of the said common Fields, Commons, common Heaths, and waste Grounds shall be compleated and finished, the said Commissioners, or any Three of them, shall form and draw up an Award or Instrument thereof in Writing, which shall express the Quantity and Contents, in Statute-Measure, of the Acres, Roods, and Perches contained in the said common Fields, Commons, common Heaths, and waste Grounds so intended to be inclosed as aforesaid, and the Quantity and Contents of each and every Part and Parcel thereof, assigned and allotted to each of the Parties intituled to any Lands or Right of Common, or any other Property within the same; and a Description of the Situation, Buttals, and Boundaries of such Parcels and Allotments respectively, and proper Orders and Directions for and concerning the laying out, making, maintaining, cleansing, and keeping in Repair, the private Roads and Ways, Fences, Ditches, Drains, Bridges, Gates, and Stiles, in, upon, and over the said intended Inclosures; and also all such Orders, Regulations, and Determinations, as are in and by this Act mentioned, directed, or required to be made or established; and such other Orders, Regulations, and Determinations as shall be necessary or proper, conformable to the true Tenor of this Act, for the more easy, convenient, and effectual Execution thereof: And for preventing all Differences and Disputes, in relation to the Matters herein contained, of which said Award or Instrument Three Parts shall be fairly ingrossed on Parchment, and signed and sealed by the said Commissioners, or any Three or more of them, and that One Part thereof shall, within Six Calendar Months next after the same shall be so signed and sealed as aforesaid, be inrolled in the Office of the Clerk of the Peace for the said County of *Dorset*, and that One other Part thereof shall remain with the said *Joseph Hardy*, and that the

the other Part of the said Award or Instrument shall remain with the publick Archives of the said Parish of *Portesbam*, in the Chest of the Parish Church there; and that a true Copy thereof, or of any Part thereof, after the same shall be so inrolled, signed by the proper Officer, shall at all Times thereafter be admitted in all Courts whatsoever as legal Evidence of the same: And that the several Allotments and Divisions, Regulations, Orders, and Determinations so to be made as aforesaid in and by such Award or Instrument, shall be binding and conclusive unto and upon all Persons intituled to or claiming any Lands or Right of Common, or other Property in the said common Fields, Commons, common Heaths, or waste Grounds: And that the said several Allotments so to be made as aforesaid to the several Parties interested, shall be in Bar and Compensation for all the Lands, Right of Common, and other Property whatsoever, in or upon the said common Fields, Commons, common Heaths, or waste Grounds, and all and all manner of Right of Common and Common of Pasture, upon, for, or in respect of the said common Fields, Commons, common Heaths, or waste Grounds, shall immediately after the Execution of such Award or Instrument cease and be for ever extinguished.

And be it further Enacted, That for the more convenient Situation and Disposition of the Lands and Grounds aforesaid, it shall and may be lawful to and for any of the Proprietors of such Lands and Grounds, to exchange all or any Part thereof for any other Lands or Grounds, either already inclosed or intended to be inclosed by virtue of this Act, lying within the Parish of *Portesbam* aforesaid, so as all such Exchange and Exchanges be made by and with the Consent and Approbation of the said Commissioners, or any Three of them, and be expressed and declared in the Award or Instrument directed to be made as aforesaid: And that all and every Exchange and Exchanges so to be made as aforesaid, shall be good, valid, and effectual in the Law, to all Intents and Purposes whatsoever.

And be it further Enacted, That all and every Person and Persons, intituled to any Allotment or Allotments to be made as aforesaid, shall and is and are hereby required to accept such Allotment or Allotments, within the Space of Six Calendar Months next after the Execution of the said Award or Instrument, and publick Notice thereof given in the Parish Church of *Portesbam* aforesaid, on a *Sunday* immediately after Divine Service, and also Notice in Writing affixed on the Door of the said Church for that Purpose, signed by the said Commissioners, or any Three of them (which Notice the said Commissioners, or any Three of them, are hereby required to cause to be publickly given); and all and every Person and Persons who shall neglect or refuse to accept any such Allotment or Allotments within the Time before mentioned, shall be totally excluded from

Old Inclosures may be exchanged with the Consent of the Commissioners.

Allotments to be accepted within a certain Time.

from any Estate, Interest, and Right of Common whatsoever, in, to, or in respect of any Lands allotted to any other Person or Persons by virtue of this Act.

Guardians,
&c. may ac-
cept Allot-
ments.

Provided always, That the Guardians, Husbands, Trustees, Committees, or Attornies, of any Person or Persons being Minors, or otherwise incapable by Law to accept any such Allotment or Allotments, shall be and are hereby enabled and required to accept thereof for the Use of such Person or Persons; and also that any Person or Persons intituled to any Allotment or Allotments, as Tenant or Tenants for Life or Lives, shall be and is and are hereby respectively enabled to accept of such Allotment or Allotments; and every such Acceptance respectively shall be and is hereby declared to be valid and effectual.

Their Non-
acceptance
not to bar In-
fants, &c.

Provided also, That the Non-claim or Non-acceptance of any Guardian, Husband, Trustee, Committee, or Attorney, shall not exclude or prejudice the Claim or Acceptance of any Infant, Lunatick, Idiot, Feme-covert, or other Person under any Incapacity as aforesaid, who shall claim or accept within Six Calendar Months after such Incapacity shall be removed, or of any Person or Persons intituled as Heir, or in Remainder after the Death of any Person dying under such Incapacity, who shall claim or accept within Six Calendar Months after his, her, or their Right or Interest shall have accrued, or be known to have accrued.

Allotments to
be fenced as
the Com-
missioners
shall direct.

And be it further Enacted, That after the Execution of the said Award or Instrument, the several Parcels of Land thereby allotted shall be inclosed, hedged, ditched, and fenced, at the Expence of, and the Inclosures, Hedges, Ditches, and Fences shall be maintained and repaired for ever by, the several Persons to whom the same Land shall be respectively allotted, or otherwise in such manner as the said Commissioners, or any Three of them, in their said Award or Instrument, shall direct and appoint.

Convenient
Gaps to be
left in the In-
closures for a
certain Time.

Provided always, That convenient Openings shall be left in the said Inclosures for the Space of Three Years next ensuing the Execution of the said Award or Instrument, for the Passage of Cattle, Carts, and Carriages through the same, unless the several Parties interested therein shall agree that the same shall be sooner made up.

Nothing in
the Act to
make void
any Will or
Settlement.

And be it further Enacted, That nothing in this Act contained, shall revoke, make void, alter, annul, or any-ways affect any Settlement or Will, or prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debt, Rent, Mortgage, Incumbrance, or other Demand, out of, upon, or affecting any of the common Fields, Commons, common Heaths, or waste Grounds, so intended to be inclosed as aforesaid, or any Part or Parcel

cel thereof; but that the Land to be allotted shall, immediately after the making such Division and Allotments, remain and enure, and be held and enjoyed by, and the several Proprietors to whom the same shall be allotted, shall from thenceforth stand and be seised thereof respectively, subject and liable to the same Uses, and for such and the same Estates and Interests, and subject to the same Wills, Leases, Powers, Provisoos, Limitations, Remainders, Trusts, Charges, Rents, Mortgages, Incumbrances, and Demands, as he, she, or they respectively should and would have stood seised of, and in his, her, or their Right of Common or other Interest in the said common Fields, Commons, common Heaths, or waste Grounds, as if this Act had never been made; any thing herein contained to the contrary notwithstanding.

And be it further Enacted, That the said *Essex Biscoe* and his Heirs, and the said *John Rhudde* and his Successors respectively, shall from time to time hereafter be intitled to the same and the like Kind of Tythes and Portions of Tythes, Payments, and Stipends out of and from the several and respective Parts, Shares, and Proportions of the said common Fields, Commons, common Heaths, or waste Grounds hereby intended to be inclosed, as aforesaid, as the same shall annually or otherwise arise, as the said *Essex Biscoe* or his Heirs, or the said *John Rhudde* or his Successors, now is or are intitled to receive out of the Lands already inclosed in the said Parish of *Portesbam*.

Essex Biscoe,
Esquire, and
Mr. John
Rhudde, to
take Tythe,

Provided always, That in case the said *Essex Biscoe* or his Heirs, or the said *John Rhudde* or his Successors, shall judge it more advantageous for him or them, or either of them, to receive any Sum of Money annually, in Lieu and full Discharge of and from all and all manner of Tythes, both great and small, or other Payments payable and issuing out of all the Lands and Grounds whatsoever within the said Parish of *Portesbam*, and shall signify the same in Writing to the said Commissioners, or any Three of them, before their making their Award herein before-mentioned; it shall and may be lawful to and for the said Commissioners, or any Three of them, and they are hereby authorized and required, at the Desire and Request of the said *Essex Biscoe* or his Heirs, or the said *John Rhudde* or his Successors, to direct any annual Sum or Composition in Money to be paid to the said *Essex Biscoe* and his Heirs, and to the said *John Rhudde* and his Successors, by the several and respective Proprietors of the Lands and Grounds in the said Parish of *Portesbam*, according to their respective Interests therein, for and in Lieu of all and all manner of Tythes, Dues, Duties, and Payments whatsoever due and payable to the said *Essex Biscoe* and his Heirs, and to the said *John Rhudde* and his Successors (except *Easter Offerings* and *Surplice Fees*, now due and payable to the said *John Rhudde* and his Successors); and shall insert the same in their Award to be made as aforesaid.

or if they desire it, the Commissioners to ascertain a Sum of Money to be paid them in lieu thereof.

And

How the same
shall be paid.

And be it further Enacted, That the said Commissioners, or any Three of them, shall, and they are hereby authorized and required to compute what yearly Rent or Sum of Money shall and ought to be rated and charged upon each respective Proprietor of Lands in the said Parish, according to a Pound Rate, towards raising the Sum or Composition in Money as aforesaid; which said Sum shall be paid to the said *Essex Biscoe* and his Heirs, and to the said *John Rhudde* and his Successors, as aforesaid, at or on the Feasts of the Annunciation of the blessed Virgin *Mary*, and *Saint Michael* the Archangel, in every Year; and which said annual Sum or Composition shall be in Lieu of, and full Compensation for, all and all manner of Tythes, Dues, Duties, and Payments whatsoever (except as before excepted) payable and issuing out of all the Lands and Grounds whatsoever lying and being within the said Parish of *Portesham*; any Law, Custom, or Usage to the contrary notwithstanding.

How the same
shall be recovered.

And be it further Enacted, That if the said annual Rent or Sum or Composition in Money as aforesaid, or any Part thereof, shall be behind and unpaid for Twenty Days next after either of the said Feasts, herein before mentioned for Payment thereof, that then, and in such Case, from time to time, as often as it shall so happen, it shall and may be lawful to and for the said *Essex Biscoe* and his Heirs, and the said *John Rhudde* and his Successors respectively, Impropiators and Vicars of the said Parish and Parish-Church of *Portesham* aforesaid, into and upon the Premises so charged with the annual Rent or Sum so behind or unpaid, or any Part thereof, to enter and distrain and to take, carry away, or otherwise legally dispose of the Distress and Distresses so taken; and also to take and receive the Rents, Issues, and Profits of the same Premises to his and their own Use and Benefit, until thereby and therewith respectively, or otherwise, all Arrears of the said annual Rent or Sum due at the Time of such Entry and Distress, and that during such Possession shall grow due, and all Costs, Charges, and Expences attending such Entry and Distress, and Perception of the Rents, and all Losses and Damages to be sustained by the said *Essex Biscoe* and his Heirs, and the said *John Rhudde* and his Successors respectively, by reason of the Non-payment of the said annual Rent or Sum, shall be fully paid and satisfied.

Commission-
ers to give
Notice of their
Meetings.

And be it further Enacted, That the said Commissioners, or any Three of them, shall, and they are hereby required to give or cause publick Notice to be given in the Parish Church of *Portesham* aforesaid, upon some *Sunday* immediately after Divine Service, of the Time and Place of their First Meeting, and every subsequent Meeting for the Execution of this Act, at least Six Days before any such Meeting shall be held; Meetings by Adjournment only excepted.

How new
Commission-
ers are to be
chosen.

And be it further Enacted, That if any One or more of the said Commissioners appointed by this Act, or who shall have been elected in

in the Manner herein after mentioned, shall, before the Execution of the said Award or Instrument, die, or refuse to act, the surviving or remaining Commissioners, or any Three of them, shall, from time to time, by Writing under their Hands and Seals, within One Calendar Month next after such Death or Refusal shall happen to be known, appoint One other Commissioner, not interested in the said intended Inclosure, instead of each Commissioner so dying or refusing to act; and every such Commissioner, so to be appointed, shall have the like Authority to act in the Execution of this Act, as the Commissioner in whose Place he shall succeed was vested with.

And be it further Enacted, That all the Charges and Expences attending the obtaining and passing of this Act, and all the Charges and Expences of the surveying the Lands and Grounds, and of the Award or Instrument to be made and executed as aforesaid, and other necessary Charges in the Execution of this Act, shall be defrayed by the several Proprietors, in Proportion to the Number of Acres of arable Land, and the Number of Pastures for Beasts and other Cattle which each Party hath in the said common Fields, Commons, common Heaths, and waste Grounds, or otherwise, in such Manner as the said Commissioners, or any Three of them, shall order, direct, and appoint.

How the Charges of the Act and the Commissioners shall be paid.

And be it further Enacted, That this Act shall not prejudice the Rights of any Lord or Lords of the Manor or Manors of or in the Parish of *Portesbam* aforesaid, or the Right of any future Lord or Lords thereof, in or to the Seignior, Royalties, Rights, and Services incident and belonging to the same respectively; nor the Right, Title, Interest, or Property of the said *Joseph Hardy*, *William Wiseman Riccard*, and of *James Jolliffe*, and *John Mitchell*, or any other Person, in several Stone-Quarries lying in the Common Fields of the said Parish of *Portesbam* respectively belonging to them, or any of them; but that such Lord or Lords for the Time being, and all Persons claiming or to claim under or in Trust for him or them, as Lord or Lords thereof, and the said *Joseph Hardy*, *William Wiseman Riccard*, *James Jolliffe*, and *John Mitchell* shall at any Times hereafter hold and enjoy all Rents, Services, Rights, Royalties, Courts, Perquisites and Profits of Courts, and all other Royalties, Privileges, and Jurisdictions to the same, or to the Lord or Lords thereof belonging (other than and except such Right of Common as can or may be claimed by the Lord or Lords of the said Manor or Manors upon the said common Fields, Commons, common Heaths, or waste Grounds hereby intended to be inclosed, and such Right in the Soil of the said common Fields, Commons, common Heaths, or waste Grounds, for which he or they respectively shall have a Satisfaction in pursuance of this Act) and also the said respective Stone-Quarries, in as full, ample, and beneficial Manner, to all Intents and Purposes, as he or they might have held and enjoyed the same, in case this Act had not been made.

Nothing in the Act to prejudice the Rights of the Lord of the Manor.

Saving

General
Saving.

Saving always to the KING's most Excellent MAJESTY, his Heirs and Successors, and to all and every Person and Persons, Bodies Politick or Corporate, his, her, or their Heirs, Successors, Executors, and Administrators (Other than and except the several Persons to whom any Allotment or Allotments of Lands shall be made by virtue of this Act); All such Estate and Interest as they, every, or any of them, had and enjoyed of, in, to, or in respect of the said common Fields, Commons, common Heaths, or waste Grounds, before the Passing of this Act, or could or might have had or enjoyed in case the same had not been made; but no such other Person or Persons, Bodies Politick or Corporate, his, her, or their Heirs, Executors, Administrators, or Successors, shall have Power to disturb any of the Allotments to be made in pursuance of this Act, but shall accept the respective Allotments which shall be made in pursuance of this Act, in lieu of the Lands and Rights of Common, or other Interest, which he, she, or they would have been intitled to therein in case this Act had not been made.

A N
A C T
F O R

Dividing and Inclosing several Common Fields, Commons, Common Heaths, and Waste Grounds, in the Parish of *Portesham*, in the County of *Dorset*.

[1762.]